



COUNCIL AGENDA: 6-16-09  
ITEM: 9.2

## Memorandum

**TO:** HONORABLE MAYOR, CITY  
COUNCIL AND REDEVELOPMENT  
AGENCY BOARD

**FROM:** Debra Figone  
Harry S. Mavrogenes

**SUBJECT:** ACTIONS RELATED TO THE  
FORMATION OF A CONVENTION  
CENTER FACILITIES DISTRICT

**DATE:** May 29, 2009

Council District: Citywide

### RECOMMENDATION

- (a) Adopt a resolution by the City Council declaring results of the special mailed-ballot election for the Convention Center Facilities District No. 2008-1 and, if approved, directing the recording of a special tax lien on properties located within the District.
- (b) Approval of an ordinance by the City Council levying the special tax within the District.
- (c) Approval to initiate validation proceedings to have a court confirm the City's legal authority to levy a special tax and issue bonds secured by the special tax.
- (d) Adoption of a resolution by the Agency Board authorizing the General Counsel to negotiate and execute a Second Amendment to the Agreement with Orrick, Herrington & Sutcliff, LLP to add \$35,000 for legal services related to the validation action for a total contract amount not to exceed \$135,000.

### OUTCOME

Approval of these recommendations will declare and certify the results of the special mailed-ballot election to form the Convention Center Facilities District No. 2008-1 ("CCFD"); levy the tax if approved; and initiate the validation action of the special tax.

### BACKGROUND

On January 13, 2009, the City Council accepted a plan of finance for the proposed Convention Center Financing District and directed staff to take actions to revise the District to implement the plan of finance.

On February 3, 2009, the City Council adopted a resolution stating its intention to establish a Convention Center Facilities District to be known as Convention Center Facilities District No. 2008-1 (the "CCFD") pursuant to the San José City Charter and Chapter 14.32 of the San José Municipal Code which incorporates and modifies the Mello-Roos Community Facilities Act of 1982, as amended (collectively, the "Law").

On March 10, 2009, the City adopted the resolution forming the CCFD and authorized the levy of special taxes on property located in the CCFD in accordance with the Rate and Method of Apportionment ("RMA") and the establishment of an annual appropriations limit for the CCFD initially set at \$50 million, subject to the approval of the voters in the CCFD. It authorized the facilities to be financed as described in Exhibit B to the Resolution of Intention ("ROI") and the mechanism by which the special tax will be collected.

### **ANALYSIS**

#### **Special Mailed-Ballot Election Results**

The City Clerk conducted a special mailed-ballot election in accordance with the California Elections Code. The ballot measure combined, as specifically authorized by the Municipal Code and the California Government Code, three questions: (1) the authorization to levy the special tax for the specified facilities; (2) the authorization to issue bonds; and (3) the establishment of the appropriations limit for the CCFD.

Special taxes must be approved by a two-thirds majority of the votes cast by the qualified electors. In the case of the CCFD, since the special tax is not ever levied on residential property, but is a tax on property owners for the use of the property as a hotel, the electors are the owners of property on which a hotel is situated (or the lessee in the cases of property owned by a public agency.) Moreover, under Section 14.32.430 of the San José Municipal Code, the votes are weighted based on the number of hotel rooms on each hotel property.

The ballots were mailed on May 11, 2009 to the landowners within the CCFD (where the landowner is a public agency, the voter is the lessee of the public agency pursuant to the City Ordinance) and returned to the City Clerk by June 9, 2009. Staff will be submitting a Supplemental Memo after June 9, 2009 tabulating the results of the election.

#### **Validation Action Proceedings**

The City's Convention Center Facilities District Ordinance differs from Mello-Roos law for the purpose of taxing hotel properties. In particular, the ordinance provides that the tax will be apportioned as a percentage of rent charged by a hotel for the occupancy of the hotel room, consistent with how the City's Transient Occupancy Tax ("TOT") is applied. Just like in a standard Mello-Roos District, a tax lien is placed on the property. However, unlike the standard Mello-Roos District, the special taxes will not be collected on the County tax roll. Instead, the hotel operator will remit the special taxes to the City on a monthly basis in the same manner as the TOT.

As mentioned above, the Ordinance also provides that in all election procedures the votes are weighted based on number of hotel rooms. Since the special tax will be a tax on property owners for the use of the property as a hotel, the electors are the owners of the property on which the hotel is situated. If the property owner is different than the hotel operator, the property owner is responsible for requiring the hotel operator to remit the taxes. If the property owner is a public entity, the lessee of the government entity is considered the property owner for the purposes of the ordinance. As such, the Agency was not eligible to vote in the CCFD formation election as ground lessor for the Hilton and Fairmont hotels, and the City did not vote as owner of the Hayes Mansion.

Since the CCFD is not a standard Mello Roos District, and since the Plan of Finance calls for the issuance of bonds secured by these special taxes, a court will need to validate the tax. Therefore, if the CCFD is passed by a two-thirds vote of the hotel owners weighted by number of rooms, staff recommends that the Council adopt a resolution authorizing the validation action. By approving the validation resolution, the City Council is authorizing the City Attorney, in concert with Orrick, Herrington & Sutcliff, LLP ("Orrick Herrington"), Bond Counsel, to prepare and cause to be filed and prosecuted to completion all proceedings required for the judicial validation under and pursuant to the provisions of Sections 860 et seq. of the California Code of Civil Procedure. The City Council further authorizes the City Attorney to take any and all actions, including the execution and delivery of appropriate documentation, as may be required to conclude such judicial validation proceedings.

Part of the Agency's contribution to the Convention Center Expansion is to pay for the consultants necessary to form the CCFD. The Agency's General Counsel entered into an agreement with Orrick Herrington on October 20, 2008, and amended on January 15, 2009, for services related to the formation of the CCFD. If the CCFD is passed, staff further recommends that the Agency Board adopt a resolution authorizing the Agency's General Counsel to negotiate and execute a Second Amendment to that agreement to add \$35,000 for legal services related to the validation action, assuming that the validation action will be uncontested.

#### **EVALUATION AND FOLLOW-UP**

Pursuant to the plan of finance accepted by Council in January, the special tax, if approved, is proposed to be levied beginning July 1, 2009. The tax will be collected during the pendency of the validation action in order to create a stabilization fund that can be accessed to pay debt service in the event that tax revenues are insufficient to pay debt service on the bonds which are expected to be sold in 2010. However, given the impact of the economy on hotel revenues and the uncertainty of the Redevelopment Agency's revenues going into next fiscal year, staff will need to return to the City Council and Agency Board with a revised plan of finance in conjunction with the Agency's budget in September. This revised plan of finance will incorporate any actions taken by the City Council in approving Team San Jose's operating budget as a part of the City's FY 09-10 Budget to be approved by the Council on June 23, 2009.

**PUBLIC OUTREACH/INTEREST**

The proposed action does not meet any of the criteria for added outreach efforts. It will be posted on the City's website and made available for public review.

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater.
- Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City.
- Criterion 3:** Consideration of proposed changes to service delivery, programs, or staffing that may have impacts to community services and have been identified by staff, the Board or Council, or a community group that requires special outreach.

**COST IMPLICATIONS**

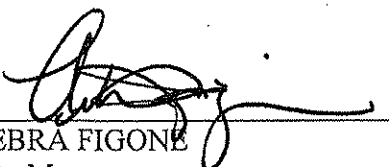
A portion of the compensation for the financial advisor and bond counsel is contingent on the successful sale and close of the bonds and will be paid from bond proceeds. Non-contingent financial advisor, bond counsel, and special tax and other consultant costs will be covered by funds provided by the Redevelopment Agency.

**COORDINATION**

This report has been prepared by the City Manager's Office in coordination with the Redevelopment Agency, Finance Department, the City Clerk's Office, and the City Attorney's Office.

**CEQA**

Resolution No. 72767 and addendum thereto, File No. PP08-002, available at <http://www.sanjoseca.gov/planning/eir/eir.asp>.

  
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